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Business Organizations - Survey of Illinois Law for the Year 1948-1949

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CHICAGO-KENT LAW REVIEW

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SURVEY OF ILLINOIS LAW FOR THE YEAR 1948-1949*

I. BUSINESS ORGANIZATIONS

CORPORATIONS

DECISIONS of moment in the law of corporations, while not monumental in character, have produced interesting side-lights upon corporate activity as well as on the rights and obligations of shareholders. A growing pressure to eliminate, or at least to severely restrict, the immunity granted eleemosynary corporations from tort liability for the acts of their agents¹ has already been noted.² A new case from the Second District, that of *Moore v. Moyle*,³ relying heavily on the decision in *Piper v. Epstein*,⁴ has reverted to first principles, leading to the dismissal of the action as it affected the charitable corporation. There can be little, if any, justification for an immunity not granted to other types of

* The present survey is not intended in any sense to be a complete commentary upon, or annotation of, the cases decided by the Illinois courts during the past year, but is published rather for the purpose of calling attention merely to cases and developments believed significant and interesting. The period covered is that of the judicial year, embracing from 400 Ill. 347 to 403 Ill. 395; from 335 Ill. App. 1 to 338 Ill. App. 20. Statutory changes having general interest are also included.

¹ *Parks v. Northwestern University*, 218 Ill. 381, 75 N. E. 991, 2 L. R. A. (N. S.) 556 (1905).

² See notes in 21 CHICAGO-KENT LAW REVIEW 256, 26 CHICAGO-KENT LAW REVIEW 279, 36 Ill. B. J. 488, 43 Ill. L. Rev. 248, 16 U. of Chi. L. Rev. 173. In *Wendt v. Servite Fathers*, 332 Ill. App. 618, 76 N. E. (2d) 342 (1947), no suggestion was made that there should be a complete elimination of the immunity, but it was there restricted to such eleemosynary corporations as did not carry public liability insurance from which tort liability might be collected without impairing the trust funds.

³ 335 Ill. App. 342, 82 N. E. (2d) 61 (1948). A certificate of importance was issued therein. The case, at the present writing, still remains pending in the Illinois Supreme Court.

⁴ 326 Ill. App. 400, 62 N. E. (2d) 139 (1945). The decision therein was criticized in 24 CHICAGO-KENT LAW REVIEW 266.

associations, so the result seems unfortunate, particularly where, as in that case, the charity has seen fit to insure against the risk involved. Does it not also become apparent that the insured corporation has itself impaired its "trust fund," at least to the extent of paying premiums for which there can be no hope of return?⁵ The opinion in the Moore case made no mention of the holding by the First District in the case of *Wendt v. Servite Fathers*,⁶ but the conflict between the two cases is such that only a decision by the Illinois Supreme Court can resolve the problem.⁷

The litigation in *Western Foundry Company v. Wicker*⁸ arose out of an attempt by the corporation to relieve itself of an intolerable burden of unearned and undeclared cumulative dividends due its preferred shareholders. The board of directors proposed a plan to the shareholders whereby the corporate charter would be amended so as to constitute a waiver and release of such dividends by the preferred shareholders, but without change in the capital structure as it concerned such shareholders and for no other consideration than a resumption of dividend payments with respect to the future. Some ninety-seven per cent of the shareholders approved of the plan at a special meeting; but the particular defendant objected and demanded payment of such past due dividends on his preferred stock. The corporation sought a declaratory judgment establishing the validity of the amendment so ratified. Although the statute applicable was the 1919 General Corporation Act,⁹ now repealed by the present Business Corporation Act, the problem involved could well arise today. The First District Appellate Court had been of the opinion that the statutory provisions regarding charter amendment could not be con-

⁵ It can only be supposed that the reason for the taking out of public liability is for the purpose of offering members of the public some source of restitution for injury done. If it is done merely to obtain a defense staff, whose sole function will be to move for dismissal of any action arising out of such injury, the issue closely approaches one of unauthorized practice of law by insurance companies.

⁶ 332 Ill. App. 618, 76 N. E. (2d) 342 (1947).

⁷ It is understood that the Supreme Court, not in the period of this survey, handed down an interim opinion affirming the decision in *Moore v. Moyle*: see 38 Ill. B. J. 68, noting action in case No. 30957. Publication of the opinion has been withheld to date, pending a rehearing.

⁸ 403 Ill. 260, 85 N. E. (2d) 722 (1949), noted in 27 CHICAGO-KENT LAW REVIEW 159, reversing 335 Ill. App. 106, 80 N. E. (2d) 548 (1948).

⁹ Laws 1919, p. 328, § 59.

strued to allow a change which operated retroactively on a contractual right. The Supreme Court, in reversing and declaring the amendment valid, regarded the right of the prescribed majority, voting by classes, to alter "rights and preferences" of preferred shares, as broad enough to include the right to cancel accrued, but undeclared, dividends. The court chose to find that such action did not have retroactive effect as the amendment was said to affect only undeclared dividends, a matter which was contractual in nature and not one concerning a "vested property interest." When so viewed, the decision is eminently sound but the result can scarcely be said to be palatable to preferred shareholders and would tend to confirm the somewhat cynical attitude which has been expressed toward such stock.¹⁰

A case of interest because of the comparison it provides is that of *Opelka v. Quincy Memorial Bridge Company*,¹¹ where certain minority shareholders were also seeking relief against the corporation. Plaintiffs there held stock which was preferred to the extent of par in the event of liquidation and was cumulatively preferred as to dividends. The corporation, seeking to liquidate by sale of all of its assets, proposed a plan of distribution at a special shareholders' meeting, at which time both the proposed sale and plan were approved by majority vote. The plan contemplated a distribution of par plus a small portion of the accumulated dividends on the preferred shares and a small sum to the common shares. The court therein, citing the cases which had been rejected by the Illinois Supreme Court in the Western Foundry Company case,¹² held that the common shareholders had no right to impair those "antecedently vested rights" of the preferred shareholders.¹³

¹⁰ See Spoerri, "What Goes in the Stock Clauses?", 37 Ill. B. J. 422 (1949).

¹¹ 335 Ill. App. 402, 84 N. E. (2d) 184 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 178, 47 Mich. L. Rev. 1010. So much of the decision as affects this problem is probably dicta since the case was brought up on a motion to dismiss the complaint. It is apparent, on first reading, that had the case been appealed on the basis of a judgment on the merits the same decision would have been reached.

¹² *Keller v. Wilson & Co.*, 21 Del. Chan. 391, 190 A. 115 (1936); *Consolidated Film Industries v. Johnson*, 22 Del. Chan. 407, 197 A. 489 (1937); *Davison v. Parke, Austin & Lipscomb*, 285 N. Y. 500, 35 N. E. (2d) 618 (1941).

¹³ As the holding therein was announced on October 29, 1948, and the decision in the Western Foundry Company case did not come until March 24, 1949, the Appellate Court is chargeable only with a lack of clairvoyance, not of negligence.

Another example of a shareholder attempting to preserve intact his interest in his corporation appears in *Oppenheimer v. Wm. F. Chiniquy Company*.¹⁴ The corporation there concerned offered its present shareholders the privilege of purchasing a pro-rata share of its treasury stock. Plaintiff wrote his acceptance of the offer within the time specified but did not tender payment until some time after the period had run. When the corporation refused to issue new shares to the plaintiff and attempted to issue the stock to third persons, plaintiff sued to enjoin that action. The court felt that, as the corporation had failed to specify a time for payment, plaintiff should prevail upon his tender of payment.¹⁵

Several cases deciding procedural questions affecting corporate activities merit at least passing mention. The real essence of the problem in *Opelka v. Quincy Memorial Bridge Company*¹⁶ was one of election of remedies. The cause of action was brought in chancery to impress a trust for the benefit of shareholders. It was asserted that the complaint should be stricken as the plaintiffs were precluded from relief for failure to file a statutory action based on Section 73 of the Business Corporation Act.¹⁷ The Appellate Court held that, in cases involving fraud or illegality,¹⁸ the remedy provided by Section 73 was not exclusive, a decision which will have salutary effect as it grants greater flexibility in instances where the shareholder, objecting to a sale of corporate assets, may have failed to take all appropriate steps under the

¹⁴ 335 Ill. App. 190, 81 N. E. (2d) 260 (1948). Leave to appeal has been denied.

¹⁵ The decision cites no Illinois case in point and is composed principally of an extended quotation from *Sommer v. Armour Gas & Oil Co.*, 71 Misc. 211, 128 N. Y. S. 382 (1911).

¹⁶ 335 Ill. App. 402, 82 N. E. (2d) 184 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 178, 47 Mich. L. Rev. 1010. In *Roddy v. Armitage-Hamlin Corporation*, 401 Ill. 605, 83 N. E. (2d) 308 (1949), reversing the holding of the Appellate Court for the First District which had dismissed the appeal taken therein, the Supreme Court decided that a suit based on Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.73, brought by minority stockholders for non-submission to them of a proposal to lease the principal corporate asset, stated a separate cause from one brought, in a representative capacity, for alleged fraud on the part of the corporate directors, hence a decree dismissing the first claim constituted a "final" order within the meaning of Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 201, even though the trial court retained jurisdiction of the claim based on fraud.

¹⁷ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.73.

¹⁸ The ruling being made on a motion to dismiss, the plaintiff's allegation of fraud was presumed to be true for purpose of achieving a decision. The case was not heard on the merits.

statute but might still be able to rely on the fraud to support his action.

Section 42 of the Business Corporation Act purports to impose personal liability on a director who votes to authorize a dividend payment while the corporation is insolvent.¹⁹ A suit against the estate of a deceased director who was alleged, while living, to have authorized such an unlawful dividend, was met by the defense that the cause of action did not survive. Section 339 of the Illinois Probate Act, however, provides that, where fraud is the issue, a cause of action will survive.²⁰ The Court of Appeals for the Seventh Circuit, in *Aiken v. Peabody*,²¹ construed the declaration of dividends by an Illinois corporation at a time when the corporation was insolvent to be a constructive fraud on its creditors, and also held that an intent to defraud need not be shown. Such being the case, the estate of the deceased corporate director was held liable to answer under the circumstances therein disclosed.

An interesting analogy appears in *Gargac v. Smith-Rowland Company*²² where the issue was one as to the survival of a cause of action against a dissolved corporation. The foreign corporation there concerned withdrew from Illinois, where it had been doing business, in order to dissolve in its domiciliary state. The suit was based on a cause of action which had arisen while the corporation was doing business in Illinois, but was not filed until some three years after such corporation had withdrawn. The defendant corporation suggested that the two-year period of limitation fixed by Section 94 of the Business Corporation Act²³ was applicable both to foreign and domestic corporations which had been dissolved. The court, however, thought that, as the withdrawal came under Section 120, which was silent as to a period of limitation, any determination had to be based on general public policy. It decided that the limitation period applicable would be the one fixed by the sovereignty creating the corporation. It

¹⁹ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.42.

²⁰ Ibid., Ch. 3, § 494.

²¹ 168 F. (2d) 615 (1947).

²² 170 F. (2d) 177 (1948).

²³ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.94

seemed to think that the authority, if any, for suing a dissolved corporation, somewhat like that applicable to a decedent, was to be ascertained from reference to the law of its domicile.

Irregularities in proceedings to dissolve domestic corporations for failure to file annual reports and make payment of franchise taxes²⁴ are not infrequent although perhaps excusable by reason of the volume of such litigation. The case of *Parsons v. Lurie*,²⁵ therefore, possesses some significance for it was there decided that jurisdictional requirements would be presumed to have been met, even though the publication notice appeared to have been given prior to the time when return of "not found" was made on the summons,²⁶ at least in collateral proceedings brought by third persons. Direct attack on the judgment of dissolution, made by the corporation itself, might have led to a different result.

While not truly a case involving corporation law, the Illinois attorney should give more than a passing thought to the holding in *Plast v. Metropolitan Trust Company*.²⁷ The court there faced the problem of construing a provision in a liquidating trust agreement to the effect that the trust was to terminate within ten years from and after its date. The trustees proposed to exchange the trust certificates for shares in a new corporation which was to be formed to manage the trust property. The shares so obtained were then to be exchanged for beneficial certificates in a voting trust to be created to maintain control of the corporation. A majority of the beneficiaries in the liquidating trust approved of the transaction, but a minority holder questioned its validity. The court, recognizing that *Olsen v. Rossetter*²⁸ was a controlling precedent forbidding trustees from using their powers of amendment to authorize an extension in the duration of the trust, nevertheless held that the proposed exchange was a "sale" within the terms of the trust instrument,

²⁴ *Ibid.*, Ch. 32, § 157.82.

²⁵ 400 Ill. 498, 81 N. E. (2d) 182 (1948).

²⁶ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.84.

²⁷ 401 Ill. 302, 82 N. E. (2d) 155 (1948).

²⁸ 399 Ill. 232, 77 N. E. (2d) 652 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 7.

thereby terminating the trust in ample time. If the same thought be applicable to a voting trust, the duration of which is fixed by statute, the conclusion reached would be interesting to say the least.

Still another case, although its effect lies principally in another field, should be noted here. In *Indemnity Insurance Company of North America v. Prairie State Bank*,²⁹ the indemnitor of an issuing corporation sued a transfer agent who had guaranteed the signature on certain shares in a transfer transaction. The shareholder, alleging a forgery, had sued the issuing corporation and the present plaintiffs, as indemnitors, had defended and lost in the lower court. On appeal from that judgment, the present defendants joined the defense and the appeal was successful. The present plaintiffs then sought indemnity for the expenses incurred in that suit. It was held that a transfer agent's guarantee of the genuineness of a signature was neither a general guarantee nor an insurance contract to cover all damages but was, more nearly, restricted to cover liability arising in the event the signature at issue was not genuine. As a consequence, the particular signature having been shown to be genuine, the defendants were not liable for the incidental damage which had arisen from a collateral cause.

Several changes in the Business Corporation Act were made at the recent session of the General Assembly. While most were designed to clarify certain provisions, some warrant attention. The definition of paid-in surplus has been modified to allow a deduction for expenses, including commissions, incurred by the corporation in the issuance of shares which do not constitute stated capital.³⁰ Corporations are now able to make donations in time of peace, whether for the public welfare or for charitable, scientific, religious or educational purposes.³¹ A corporation must not commence business until \$1000 has been paid in as considera-

²⁹ 336 Ill. App. 438, 84 N. E. (2d) 338 (1949). Leave to appeal has been denied.

³⁰ Laws 1949, p. 605 et seq., H. B. 652. As the measure made changes in a number of sections of the Business Corporation Act, one blanket reference is made thereto at this point. The particular sections amended are set forth in notes 30 to 40 inclusive, post. See Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.2(1) and § 157.19(c).

³¹ Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, § 157.5(m).

tion for the issuance of shares,³² a statement to that effect must appear in the articles of incorporation,³³ and the liability of directors for commencing business prior thereto is both predicated on and limited to such amount.³⁴ If all the corporate property and business is confined to Illinois, and the incorporators elect to pay their franchise tax on the basis of the entire stated capital and paid-in surplus, the usual estimates regarding property and potential business to be done in Illinois need not be put in the articles of incorporation.³⁵ It is now permissible to change the statement in the articles of incorporation regarding the number and class of shares a corporation proposes to issue without making a report to the Secretary of State.³⁶ The board of directors is also given greater latitude in connection with a reduction of paid-in surplus,³⁷ but such reduction may not bring the sum of the stated capital and paid-in surplus below the \$1000 minimum capital requirement. Actions brought by dissenting shareholders for relief in case of a proposed merger, consolidation, or sale of assets will now be governed by the practice and procedural sections of the Civil Practice Act.³⁸ The penalties imposed under Section 100 of the Business Corporation Act, as it relates to corporations,³⁹ and by Section 101 as to directors,⁴⁰ are now made equally applicable to domestic and foreign corporations. Some of the Business Corporation Act provisions have also been made applicable to domestic railroad corporations. In addition, a number of former statutes were repealed.⁴¹

³² *Ibid.*, Ch. 32, § 157.50.

³³ *Ibid.*, Ch. 32, § 157.47(n).

³⁴ *Ibid.*, Ch. 32, § 157.42(e).

³⁵ *Ibid.*, Ch. 32, §§ 157.47(m), 157.96a, 157.97(k), 157.117(k), 157.128(b)(3), 157.131(b)(3), 157.132.

³⁶ *Ibid.*, Ch. 32, § 157.57.

³⁷ *Ibid.*, Ch. 32, § 157.60a.

³⁸ *Ibid.*, Ch. 32, § 157.70 and § 157.73.

³⁹ *Ibid.*, Ch. 32, § 157.100.

⁴⁰ *Ibid.*, Ch. 32, § 157.101.

⁴¹ See Ill. Rev. Stat. 1949, Vol. 1, Ch. 32, §§ 210, 348.60, 375-7, 378-86, 390-2, 398, 441, 470, 219, 223, 231(1), 241a, 520, 522, 554, 564, 567, 570 and 587, repealed by House Bills numbered 653, 655, 656, 657, 658, 659, 707, Senate Bills 531 and 549, and House Bills 660, 932, and 701 respectively.

PRINCIPAL AND AGENT

The problem of the "middleman" or go-between relationship came before the Illinois Appellate Court in the case of *Whiston v. David Mayer Building Corporation*,⁴² wherein the plaintiff, a real estate broker, had been requested by an airline corporation to secure suitable office space for it. In the course of his attempts to carry out such assignment, the plaintiff talked by telephone with the leasing officer of the defendant, indicating a desire to represent the building corporation in a proposed lease of space to a client. The defendant's officer inquired for and was given the name of the client. A conference between the parties was arranged but no agreement was then reached. A lease was later entered into by the interested parties, albeit without the knowledge of, or further service on the part of, plaintiff. In a suit to recover one-half of the customary brokerage commission, plaintiff based his claim upon the contention that, by requesting to be permitted to act as broker and by the consent of defendant's officer to see the prospective lessee, an implied contract was entered into authorizing plaintiff to procure a tenant. A judgment in plaintiff's favor was reversed when the Appellate Court declared that plaintiff was not a middleman. It said that middlemen situations are "exceptional and their character should appear clearly . . . The theory of the middleman relationship is that the 'go-between' has nothing to do with negotiations and consequently it is of no importance that both parties may pay him."⁴³ The granting of permission for an informal exploratory conference, however, was held not to be an assent to any proposed brokerage deal, hence plaintiff was not entitled to any fee.

The attorney-client relationship occupies a special place in the law of agency, one enhanced by a quite natural desire on the part of members of the legal profession to examine carefully all decisions which might vitally affect them. In *Price*

⁴² 337 Ill. App. 67, 84 N. E. (2d) 858 (1949). Leave to appeal has been denied.

⁴³ 337 Ill. App. 67 at 71, 84 N. E. (2d) 858 at 860.

v. *Seator*,⁴⁴ the Appellate Court reiterated, in connection with a trial court's failure to permit a substitution of attorneys as requested by a client, the well-established principle that a litigant has the unquestioned right to discharge his attorney at any time, with or without cause, subject only to his obligation to compensate the attorney without fault for services theretofore rendered, either on a *quantum meruit* basis or according to any express contract existing between the parties. It took occasion therein to emphasize that "as a matter of simple justice, no attorney, whose continuation as such is objected to by the client, should presume to render additional services without express authorization of the client, and if the attorney does render such service he should be denied compensation."⁴⁵

In *Joslyn v. Joslyn*,⁴⁶ however, the court was confronted with an unusual situation in which the attorney had taken an assignment of his client's claim for alimony arising out of a divorce proceeding. That fact was brought to the attention of the court when proceedings were had, on a petition by the wife's former attorney, to secure an allowance for fees and expenses. The petition was presented after entry of a consent decree which reserved jurisdiction on the point. The Appellate Court, reversing an order which had awarded fees to the attorney, found that, by reason of the assignment, the attorney was the real party in interest and, because he had carried on "a flood of litigation" throughout a period of eight years, was guilty of having unclean hands, a factor which required that his claim should be denied.

There is no doubt that great care should be exercised by attorneys when drafting and filing notices of attorney's lien for the statute creating such lien was unknown to the common law and must, therefore, be strictly construed. That statute provides that service of notice of attorney's lien may "be made by registered mail, upon the party against whom their clients may have

⁴⁴ 337 Ill. App. 248, 85 N. E. (2d) 848 (1949). Leave to appeal has been denied.

⁴⁵ 337 Ill. App. 248 at 258, 85 N. E. (2d) 848 at 853.

⁴⁶ 337 Ill. App. 443, 86 N. E. (2d) 367 (1949). Leave to appeal has been denied.

such suits, claims or causes of action.”⁴⁷ In *DeParcq v. Gardner*,⁴⁸ the attorney who had been retained to recover damages on a claim for personal injuries filed notice of his attorney’s lien upon the railroad company despite the fact that it had been dissolved and the defendant had been appointed trustee of its properties prior to the making of the contract between the attorney and his client. The contract only mentioned a claim against the railroad company, not one against the trustee. In addition, the notice was not mailed to the trustee’s only office, located at an address different from the one to which the notice was sent. The faulty contract and equally faulty service were held to be more than mere technical error or misnomer, being rather a case of mistaken identity, hence the notice of lien was regarded ineffective to preserve the attorney’s lien for his fees.

Persons acting in the capacity of brokers or agents should take notice of the decision in *Mickelson v. Kolb*,⁴⁹ for many such parties operate under trade names. The plaintiff there, a licensed real estate broker doing business under a trade name which had not been registered at the time in the fashion required by the “assumed name” statute,⁵⁰ was employed to sell defendant’s property. When plaintiff found it necessary to sue the defendant to recover brokerage commissions earned, the court dismissed the action, and the Appellate Court affirmed the holding, because of an alleged public policy that non-compliance with the “assumed name” statute should exclude the broker from collecting his pay. The forfeiture of the right to recover was said to be required by the fact that the statute made it unlawful to do business without first registering the assumed name. That holding was not commanded by the statute, for it says nothing as to the validity of contracts made by persons affected thereby. The decision is even more unfortunate as it represents a view once adhered to elsewhere but from which other courts and legis-

⁴⁷ Ill. Rev. Stat. 1949, Vol. 1, Ch. 13, § 14.

⁴⁸ 336 Ill. App. 144, 83 N. E. (2d) 32 (1948).

⁴⁹ 337 Ill. App. 493, 86 N. E. (2d) 152 (1949), noted in 27 CHICAGO-KENT LAW REVIEW 327.

⁵⁰ Ill. Rev. Stat. 1949, Vol. 2, Ch. 96, § 4 et seq.

latures have long since retreated.⁵¹ The court also held that the co-plaintiff, a licensed broker but one operating under his own name, who had been simultaneously engaged by the defendant, could not recover because the intrinsic invalidity affected the whole contract.

LABOR LAW

A problem calling for interpretation of a provision of the Illinois Child Labor Act⁵² came before the Supreme Court in the case of *Gorczynski v. Nugent*.⁵³ The plaintiff therein, a boy thirteen years of age, had been employed by the owner of race horses to walk the animals after exercise periods or races under an arrangement calling for regular hours and fixed wages. The race horses in question were kept, pursuant to board rule, in a stable area owned by the race track corporation and policed by it, to which only licensed persons were supposed to have access. The plaintiff was not listed as an employee but, while present on the premises performing his daily chores, was severely injured by one of the horses. His suit, based on the Child Labor Act, was directed against the race horse owner who had employed him and also against the race track corporation. The principal question presented on an appeal from a judgment against the race track corporation was whether it had "permitted or suffered" the plaintiff to work on its premises. The court, passing upon defendant's contention that the words "permit or suffer" implied effective control, actual knowledge, and conscious consent, alleged to be lacking in the instant case, declared that the relation of master and servant was not necessary to establish liability and that the corporation was under a positive duty to investigate and supervise all persons present in attendance upon the horses. As supervisory control had been vested by the corporation in a board of stewards who could have effectively prevented the violation, the defendant corporation

⁵¹ See 27 CHICAGO-KENT LAW REVIEW 327 at 332-4.

⁵² Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 31.1 et seq.

⁵³ 402 Ill. 147, 83 N. E. (2d) 495 (1949), affirming 335 Ill. App. 63, 80 N. E. (2d) 418 (1948).

was held to have "permitted or suffered" plaintiff to work in violation of the statute.⁵⁴

Another child labor case, that of *Hylak v. Marcal, Inc.*,⁵⁵ concerned a fifteen-year old girl, injured while operating a punch press, who had falsified her age at the time of her employment. The girl, through a next friend, filed suit for the recovery of damages, basing her claim upon an alleged violation of former Section 18 of the Child Labor Act, then in force.⁵⁶ That statute made it the duty of the defendant, if it employed minors over fourteen and under sixteen years of age, to keep a register in the factory listing the names, ages, and residences of all employed minors, and to procure and place on file an employment certificate issued by the Superintendent of Schools. The defendant did not keep any such register or procure any such certificate as its policy had been not to employ minors. The Appellate Court, sustaining a judgment in favor of plaintiff, quoted from the opinion in *Gill v. Boston Store of Chicago*⁵⁷ to the effect that the prohibition of employment of all children under sixteen years of age is absolute in the absence of an employment certificate, as a consequence of which all other evidence became immaterial. Compliance with the statute was considered to be the only possible justification available to the employer.

Several amendments to existing statutes, dealing with incidents of the employer-employee relationship, were enacted at the recent session of the General Assembly. Thus the Act of July 9, 1937, which fixes the time for the payment of wages due employees and provides for enforcement by the Department of Labor,⁵⁸ was amended to include within its purview all wage pay-

⁵⁴ A subsidiary issue was made over the point as to whether or not plaintiff's employment was not "in connection with any place of amusement," inasmuch as the service was not performed in the area of the race track itself. The court pointed out that a single fence enclosed the entire race track property, including the stable area, and the work done by the plaintiff was essential if races were to be carried on within the enclosure. A reasonable connection between the operation of the race track as a place of amusement and the work performed by plaintiff in the adjacent stable area was said to be found present.

⁵⁵ 335 Ill. App. 48, 80 N. E. (2d) 411 (1948). Leave to appeal has been denied.

⁵⁶ Section 18 of the former law is substantially the same as Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 31.6.

⁵⁷ 337 Ill. 70, 168 N. E. 895 (1929).

⁵⁸ Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 39g et seq.

ments not exceeding the amount of \$150 instead of the limit of \$100 previously controlling.⁵⁹ An increase in benefit payments under the Unemployment Compensation Act from \$20 to \$25 per week may be noted.⁶⁰ The standard of "availability" for work, a prerequisite for eligibility to receive benefits, has been modified in three respects. First, a person shall be deemed unavailable for work if, after his separation from his most recent job, he has moved to a locality where opportunities for work are substantially less favorable than those in the locality he has left. Second, a woman is to be considered unavailable for work if she has left her most recent job voluntarily because of pregnancy, but the period of unavailability is limited to the thirteen weeks immediately preceding the anticipated date of childbirth and the four weeks which immediately follow such event. Third, a person is to be deemed unavailable for work (a) if he has left his employment to marry, except where he has become the sole support of himself and his family, or (b) if he has left such employment because of marital, filial, or other domestic circumstance, so long as such circumstance continues.⁶¹

By another amendment, a person is declared to be ineligible for benefits if he is discharged because of the commission of a felony in connection with his work, for which the employer is in no way responsible. The ineligibility is to occur only if the employer notifies the Director of such event within specified time limits, and then only if (a) the employee has admitted the felony to a representative of the Director, or (b) has been convicted thereof by a court of competent jurisdiction. If the employee, by reason of such crime, is in legal custody, the determination of his benefit rights is to be held in abeyance pending the result of any legal proceedings arising therefrom.⁶²

The provisions dealing with the enforcement of claims against an employer for contributions toward unemployment compensation payments have been amended so as to provide that, when-

⁵⁹ Laws 1949, p. 882, H. B. 991; Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 39h.

⁶⁰ Laws 1949, p. 887, H. B. 1105; Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 220.

⁶¹ *Ibid.*, Ch. 48, § 222.

⁶² *Ibid.*, Ch. 48, § 223.

ever an execution or writ of attachment is levied upon any personal property claimed by any person other than the defendant or is claimed to be exempt, the person making such claim must give written notice thereof within ten days of the making of the levy. If such written notice is not given, the claimant is to be forever barred from bringing action against the sheriff for injury to or conversion of the property involved.⁶³

WORKMEN'S COMPENSATION

While voting for an increase in payments under the Unemployment Compensation Act, the legislature also saw fit to increase benefits payable under the Workmen's Compensation Act⁶⁴ and the Occupational Diseases Act⁶⁵ by a flat fifteen per cent. This increase is the second in a three-year period, for prior increases had been granted by the legislature in 1947. The amended statutes will necessarily be consulted by those whose interests are directly affected.

One novel question for judicial consideration was raised in *Victor v. Dehmlow*,⁶⁶ wherein the Appellate Court stated that a minor who worked for his father under an "implied" contract for hire could be considered an "employee" of his father under the Workmen's Compensation Act, notwithstanding that he was not carried on his father's payroll as an employee, was not paid any wages, and was being supported by his father. The decision came in connection with a common law suit brought by the widow of one who was under the Workmen's Compensation Act against the father of the minor and was based on the premise that if the legislature had intended to exclude minors employed by their parents from the operation of the statute it would have made provision for their exclusion.⁶⁷ the broader implication of the decision lies in the fact that it may support

⁶³ Laws 1949, p. 884, S. B. 202; Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 243(c).

⁶⁴ Laws 1949, p. 905, H. B. 1061; Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 144.

⁶⁵ Laws 1949, p. 869, H. B. 1062; Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 172.7.

⁶⁶ 336 Ill. App. 432, 84 N. E. (2d) 342 (1949), noted in 27 CHICAGO-KENT LAW REVIEW 257. Leave to appeal has been granted.

⁶⁷ Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 147(f).

the holding that a minor, doing some work for a parent who is under the act, may be able to claim compensation from his parent for fairly unsubstantial services although he normally would not be permitted to sue for payment for such services or for harm arising therefrom, even if the services were substantial in nature.⁶⁸

II. CONTRACTS

While there has been the customary dearth of cases dealing with general contract doctrines, the same thing cannot be said of certain of the specialized segments of contract law hereinafter mentioned, which segments have been treated separately for the benefit of those practicing therein.

INSURANCE

It could be expected that a host of claims of variable description would follow in the wake of the disastrous fire which swept through the LaSalle Hotel early one morning in 1946. Many of these claims have been settled, but one culminated in the case of *Denham v. LaSalle-Madison Hotel Company*.¹ The plaintiff-insurer therein sought a declaratory judgment freeing it from liability in excess of \$10,000 under an insurance policy whereby it had agreed to pay, on behalf of the insured and subject to definite limits of liability, all sums which the insured should become "legally obligated to pay to any person or persons by reason of liability for damage to or loss of property of any guest or invitee while said property" was in the custody or control of the assured or on the premises. The maximum limit of liability for any one occurrence or catastrophe was set at \$10,000 with the further proviso that any payment made should automatically reduce the insurer's liability *pro tanto*, except as the contract might be reinstated under condition "H" of the policy. That clause directed that the policy should be "immediately reinstated as respects any subsequent loss, to ap-

⁶⁸ See 27 CHICAGO-KENT LAW REVIEW 257 at 258, and *Wilhelm v. Industrial Commission*, 399 Ill. 80, 77 N. E. (2d) 174 (1948), on the related problem of the possibility of compensation between husband and wife.

¹ 168 F. (2d) 576 (1948).